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#6 Appeal 266
Brief
D. Ingram

RECEIVED 5-16-88

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GROUP 260

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Ole K. Nilssen
Entitled: TRACK LIGHTING SYSTEM
FOR 277 VOLT POWER LINE
Serial Number: 06/889,746
Filing Date: 07/28/86
Art Unit: 266
Examiner: SAXFIELD CHATMON

I, OLE K. NILSSEN, HEREWITH
CERTIFY THAT THE DATE OF
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IS: 4-27-88

APPEAL BRIEF

Commissioner of Patents and Trademarks
Washington, D.C. 20231

Pursuant to Notice of Appeal, Applicant herewith provides
a Brief in accordance with 37 U.S.C. 1.192.

A check (#2610) for the \$65.00 fee is enclosed.

At issue is the propriety of Examiner's rejection of: i)
claims 1, 4-9, 12, 14-19 under 35 U.S.C. 112, second paragraph;
ii) claims 1-19 under 35 U.S.C. 103 over Spira et al. ("Spira")
in view of Kivari and Neumann et al. ("Neumann"); and iii) claims
1-19 under U.S.C. 103 over Nilssen in view of Kivari and Neumann.

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Subject appeal is being prosecuted by Applicant without
the benefit of counsel.

CONCISE EXPLANATION OF INVENTION

The invention may be consisely described by claims 1, 4 and 19, as follows.

1. A track lighting system comprising:

a source providing a relatively high-magnitude low-frequency AC voltage (ex: 277Volt/60Hz) to a pair of power line terminals (PLC);

voltage conditioning means (ex: EVCn) connected with the power line terminals and operative to provide a relatively low-magnitude high-frequency AC voltage (ex: 120Volt/30kHz) at a pair of track conductors (ex: comprised within PTn) in a power track (ex: PTn), the power track having a receptacle slot operable to receive and hold track lighting units (ex: LUna) having socket terminals, thereby to permit electrical contact between the socket terminals and the track conductors; and

track lighting units (ex: LUna): i) having socket terminals, ii) adapted by way of these socket terminals to be inserted into and held by the power track's receptacle slot, thereby to establish electrical contact between the socket terminals and the track conductors, and iii) adapted to be properly powered by the relatively low-magnitude high-frequency AC voltage.

4. The track lighting system of claim 1 wherein: i) the high-magnitude low-frequency AC voltage has an RMS magnitude of about 277 Volt and a frequency of about 60 Hz, and ii) the low-magnitude high-frequency AC voltage has an RMS magnitude of about 120 Volt and a frequency on the order of 30 kHz.

19. In a track lighting system connected with an ordinary electric utility power line and powered by the power line voltage thereon, the power line voltage having an RMS magnitude between about 210 Volt and about 280 Volt, the track lighting system having power track means with track conductors, the improvement comprising:

voltage conditioner means (EVC) connected with the power line and operative to provide at the track conductors a voltage of RMS magnitude between about 105 Volt and about 140 Volt, thereby to permit the operation by direct connection with these track conductors of incandescent lamp means requiring for their proper operation to be powered by a voltage of RMS magnitude between about 105 Volt and about 140 Volt;

the voltage conditioner being characterized by being operative to perform the indicated voltage magnitude-reduction without having to use a power transformer therefor, yet drawing power from the power line with a power factor higher than 67%.

AUTHORITIES

The authorities to be relied upon in this Appeal Brief are:

(1) Natural Law, by which Applicant means to refer to verifiable reality, facts, truths, etc.;

(2) Common Law, by which Applicant means particularly to refer to commonly accepted/used words and phrases of the English language -- the English language being by unavoidable necessity a basic constituent of Common Law;

(3) Statutory Law, particularly paragraph 103 of the Patent Law (as interpreted according to the plain meaning of its language); and

(4) Case Law, particularly recent decisions by the CAFC to the extent that these decisions do not conflict with superior laws.

Of course, Natural Law preceedes and is superior to both Common Law and Statutory Law. Case Law is inferior to both Common Law and Statutory Law, as well as to Natural Law.

Thus, Statutory Law and Common Law are valid only as long as they do not conflict with Natural Law, Common Law and/or Statutory Law.

REMARKS

Applicant traverses Examiner's various rejections for reasons as follow.

In re "112" Rejections

Examiner rejected claims 1, 4-9, 12, 14-19 under 35 U.S.C. 112, second paragraph, as being indefinite.

Applicant traverses these rejections for the following reasons.

(a) In support of his "112" rejections, Examiner states that:

"In claim 1, for example, the recitation of "voltage conditioning means connected with the power line terminal" is vague and indefinite".

Applicant submits that, to a person having ordinary skill in the art pertinent hereto, this particular recitation would be perfectly clear and definite.

Then, Examiner refers to claims 17-18 and states:

"the recitation of a tack light system ... being operative to provide a high frequency voltage ..." is vague and indefinite".

This alleged quotation by Examiner is manifestly erroneous.

And then Examiner continues:

"How can a rack lighting system provide a frequency voltage in the absence of an inverter?".

Applicant respectfully suggests that Examiner must have been "under the influence" of something or other while writing the above-quoted passage. It is incomprehensible to Applicant.

Then, Examiner asks:

"Where is there any structure corresponding to an inverter recited in claims 17 and 18?".

There is no recitation of "an inverter" in claims 17 and 18. So, what is the basis for Examiner's question?

Or, does Examiner mean to say that the "electric power track means" of claims 17/18 must by necessity comprise an inverter means? --- If so, such inverter means would then by necessity have to be comprised by the "electric power track means"; which would mean that it would have to be an inherent feature of the "power track means" as defined.

In fact, by necessity and inherency, the "power track means" as defined must comprise a frequency conversion means. However, since such a frequency conversion means is an inherent feature of the "power track means" as defined in claims 17/18, and since such a frequency converter means constitutes a well known element, there is no need to describe it in an express manner. A person having ordinary skill in the pertinent art would have understood that such a frequency converter means would have to be part of the "power track means" -- and he would have found the requisite details in the specification.

In any case, Applicant believes Examiner's own "arguments" to constitute sufficient reason for dismissing his "112" rejections as both inept and inappropos.

In re First "103" Rejections

Examiner rejected claims 1-19 under 35 U.S.C. 103 as being unpatentable over Spira in view of Kivari and Neumann.

Applicant traverses these rejections for the following reasons.

(b) The claimed invention clearly belongs to the art of track lighting. Therefore, to properly initiate his reasoning, it is necessary for Examiner to start from a position clearly associated with the art of track lighting. Spira can not in any reasonable manner constitute such a position.

By connecting Spira with track lighting, a significant inventive step has already been taken; and Examiner has not provided any evidence supporting his position to the effect that this inventive step would have been obvious.

(c) Of the three applied references, the only reference that legitimately may constitute a starting point for a trail of reason possibly leading to the claimed invention is that of Neumann, since Neumann is the only reference related to the art of track lighting.

Yet, Neumann provides no suggestion whatsoever to the effect that his teachings might advantageously be modified by way of combining them with teachings such as those of Spira and/or Kivari.

(d) Even if Spira were to be considered as the prime reference, there is no suggestion in Spira to the effect that his teachings might advantageously be modified by combining them with teachings such as those of Neumann and/or Kivari.

In fact, as indicated in his Fig. 2, Spira explicitly describes a power distribution means appropriately suited for his system. Thus, if anything, Spira teaches away from using some other power distribution system; which is to say: Spira provides no plain and clear motivation to seek to use some other power distribution means in or for his system.

(e) In summarizing his position, Examiner makes the following statement:

"Given the Spira et al specific teaching of an incandescent lamp high frequency circuit without the ballast circuit of Figure 4, it would be obvious to use Kivari's incandescent lamp combination in lieu of ballast-lamp fixture 40".

Examiner has provided no evidence whatsoever in support of his assertion to the effect that it would have been obvious to use Kivari's lamp in combination with the Spira system.

To a skilled artisan, it would rather have been obvious not to use the Kivari lamp in Spira's system. This is so for the reason that the Kivari lamp is explicitly intended for operation on "ordinary house-lighting circuits" or "110 volts A.C.", while the Spira system operates on 255Volt/23kHz, -- which is totally non-ordinary for "house-lighting circuits". Thus, the skilled artisan would have had good reason not to conclude that the Kivari lamp would be useful in the Spira system.

(f) Then, Examiner goes on to say:

"It would be equally obvious to use the Neumann et al track power distribution means in lieu of the Spira et al transmission line distribution means 36".

Examiner makes this assertion without any supporting evidence.

To a skilled artisan, it would not have been "obvious to use the Neumann ... track power distribution means in lieu of the Spira ... transmission line". This is so for the reason that Spira teaches the advantage of using the particular power distribution means of his Fig. 2; which fact teaches away from choosing some other power distribution means, particularly a power-track-type of power distribution means.

In re Second "103" Rejections

Examiner also rejected claims 1-19 under 35 U.S.C. 103 as being unpatentable over Nilssen in view of Kavari and Neumann.

Applicant traverses these rejections for the following reasons.

(g) As stated in section (b) above, the claimed invention clearly belongs to the art of track lighting. Therefore, in connecting Nilssen with track lighting, the Examiner has -- without providing evidence therefor -- taken a significant inventive step as granted.

(h) As in (d) above, Nilssen provides no suggestion to the effect that his teachings might advantageously be modified and/or applied by combining them with teachings such as those of Skivari and/or Neumann.

CONCLUDING REMARKS

It is clear to Applicant that Examiner lacks ordinary skill in the particular art pertinent to the claimed subject matter. That being the case, Examiner's prima facie impressions, opinions, etc. with respect to that particular subject matter have no legal relevance. Hence, Examiner has provided no legally relevant evidence to the effect that the claimed subject matter would have been obvious to a person having ordinary skill in that particular art.

Compared with a person not possessing ordinary skill in a certain subject matter, a person who does possess such skill would have to be considered an expert. Thus, in effect, Examiner has been acting as his own expert counsel without having the skill necessary to qualify as such expert counsel.

For an individual to render legally/professionally relevant opinions with respect to what may or may not be obvious to a person having ordinary skill in a particular art, it is necessary for that individual himself to possess at least ordinary skill in that particular art. Otherwise, the individual would lack the particular literacy/culture/vocabulary/pre-dispositions/values/concerns/etc. associated with that particular art; which lack would prevent the individual from properly perceiving/interpreting/applying/combining/etc. facts/issues/advantages/problems/references/etc. of that art, as well as from properly judging what would be obvious versus what would be unobvious to a person who does possess ordinary skill in that particular art.

Clearly, a proposition that may be prima facie obvious to a person possessing less than ordinary skill in a given art may not be prima facie obvious to a person who does possess such ordinary skill. This might be so for the reason that the person with the lower skill level may not see problems associated with the proposition, which problems might clearly be seen by the person of the higher skill level.

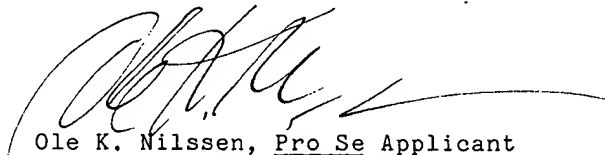
In its proceedings, Applicant anticipates that the Board may refer to the so-called "hypothetical person" in connection with evaluating the patentability of the claimed invention. Applicant objects to the use of this "hypothetical person" concept for the following reasons.

Clearly, in view of paragraph 103 of the Patent Law, the basic issue involved in the determination of obviousness relates to what would be obvious "to a person having ordinary skill in the art to which the subject matter belongs".

Moreover, within the plain meaning of the words actually used in paragraph 103, the term "person having ordinary skill" does not in any way relate to some "hypothetical person".

Any court-decision "authorizing" such an interpretation is clearly wrong as a matter of superior law (i.e., Natural Law and/or Common Law). Rather, absent clear indications to the contrary, the term "person having ordinary skill" must be interpreted in accordance with its plain meaning in ordinary English.

As a bottom line conclusion, Examiner has not provided any evidence of obviousness of the claimed invention.



Ole K. Nilssen, Pro Se Applicant

312-658-5615

Date: 4-26-88